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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 130306200-4084-02]

RIN 0648-BD03

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Management Area; Amendment 102

AGENCY: National Marine Fisheries Service (NMFS) National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes regulations to implement Amendment 102 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI FMP), and a regulatory amendment to the Individual Fishing Quota Program for the Fixed-Gear Commercial Fisheries for Pacific Halibut and Sablefish in Waters in and off Alaska (IFQ Program). Amendment 102 and the implementing regulations create, in halibut IFQ regulatory area 4B (Area 4B) and the sablefish Aleutian Islands regulatory area, a Community Quota Entity (CQE) Program that is similar to the existing CQE Program in the Gulf of Alaska (GOA). These actions allow an eligible community in Area 4B and in the Aleutian Islands to establish a non-profit organization as a CQE to purchase halibut catcher vessel quota share (QS) assigned to Area 4B and sablefish QS assigned to the Aleutian Islands. The CQE would assign

the annual halibut and sablefish IFQ derived from the QS to participants according to defined CQE Program elements. In addition, this action revises the IFQ Program regulations to allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B. These actions provide additional fishing opportunities for residents of fishery dependent communities and sustain participation in the halibut and sablefish IFQ fisheries. These actions are intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the BSAI FMP, and other applicable law.

DATES: Effective March 17, 2014.

ADDRESSES: Electronic copies of the Regulatory Impact Review (RIR) for Amendment 102 and the RIR/Initial Regulatory Flexibility Analysis (RIR/IRFA) for the regulatory amendment to allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B prepared for this action may be obtained from <http://www.regulations.gov> or from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>. An electronic copy of the 2010 Review of the CQE Program under the Halibut/Sablefish IFQ Program, Anchorage, Alaska, March 2010 by the North Pacific Fishery Management Council (Council) is available from the Council website at [www.npfmc.org/community-quota-entity-program/](http://www.npfmc.org/community-quota-entity-program/).

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802-1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; or by e-mail to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov) or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Peggy Murphy, (907) 586-7228.

## SUPPLEMENTARY INFORMATION:

### Regulatory Authority

NMFS issues regulations to implement Amendment 102 to the BSAI FMP and a regulatory amendment to the IFQ Program to authorize a CQE Program for halibut and sablefish in the Aleutian Islands. NMFS also amends the halibut and sablefish IFQ regulations to allow IFQ derived from D share halibut QS to be fished on Category C vessels in Area 4B and to describe current CQE QS use caps. The North Pacific Fishery Management Council (Council) recommended and NMFS approved the BSAI FMP in 1982 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 et seq.). Regulations implementing the BSAI FMP and general regulations governing sablefish appear at 50 CFR part 679. Fishing for Pacific halibut (Hippoglossus stenolepis) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Northern Pacific Halibut Act of 1982 (Halibut Act). Section 773(c) of the Halibut Act authorizes the Council to develop regulations that are in addition to, and not in conflict with, regulations adopted by the IPHC. Such Council-recommended regulations may be implemented by NMFS only after approval by the Secretary of Commerce (Secretary).

### Background

The Notice of Availability for Amendment 102 was published in the Federal Register on November 1, 2013 (78 FR 65602), with a 60-day comment period that ended December 31, 2013. The Secretary approved Amendment 102 on January 30, 2014. The Council submitted the proposed rule to NMFS, and it was published in the Federal Register on November 14, 2013 (78 FR 68390). The 30-day comment period on the proposed rule ended on December 16, 2013. NMFS received a total of nine comment letters on Amendment 102 and the proposed rule during

the comment periods. Three comment letters addressed Amendment 102 and the proposed regulations for the amendment. The letters contained six substantive comments. Four comment letters addressed the proposed regulations to allow D share QS to be fished on category C vessels in Area 4B. These letters contained one substantive comment. Two comment letters concerned fishery management policies that are beyond the scope of this final action. A summary of the comments and the responses by NMFS are provided under the Comments and Responses section of this preamble.

A detailed review of the provisions of Amendment 102, the proposed regulations, and the rationale for these regulations is provided in the preamble to the proposed rule (78 FR 68390, November 14, 2013), and a brief summary is provided here. The proposed rule is available from the NMFS Alaska Region web site (see ADDRESSES).

This final rule implements two separate actions, it: 1) establishes a CQE Program in the Aleutian Islands (Amendment 102); and 2) allows IFQ derived from D share halibut QS to be fished on vessels less than or equal to 60 ft. length overall (LOA) in Area 4B. Action 1, as it relates to sablefish, amends the BSAI FMP. Action 1, as it relates to halibut, and action 2 amend the IFQ Program and CQE Program regulations. The following sections provide background on the need for, objectives of, and the provisions of Amendment 102 and this final rule.

#### The IFQ and CQE Programs

The IFQ Program, a limited access privilege program for the fixed-gear halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992 and approved by NMFS in 1993. Initial implementing rules were published November 9, 1993 (58 FR 59375), and fishing under the IFQ Program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific

management areas. The IFQ Program for the sablefish fishery is implemented by the BSAI FMP and Federal regulations at 50 CFR part 679 under the authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act. A comprehensive explanation of the IFQ Program can be found in the final rule implementing the program (58 FR 59375, November 9, 1993).

Under the IFQ Program, NMFS issued QS in the fixed-gear halibut and sablefish fishery by area and vessel size. Halibut QS was issued specific to one of eight IPHC halibut management areas throughout the Bering Sea and Aleutian Islands (BSAI) and GOA, and four vessel categories: freezer (catcher/processor) category (A share); catcher vessel greater than 60 ft. LOA (B share); catcher vessel greater than 35 ft. to 60 ft. LOA (C share); and catcher vessel less than or equal to 35 ft. LOA (D share). Sablefish QS was issued specific to one of six sablefish management areas throughout the BSAI and GOA, and three vessel categories: freezer (catcher/processor) category (A share); catcher vessel greater than 60 ft. LOA (B share); and catcher vessel less than or equal to 60 ft. LOA (C share). The amount of halibut and sablefish that each QS holder may harvest is calculated annually and issued as IFQ in pounds on an IFQ permit. An IFQ halibut permit authorizes participation in the fixed-gear fishery for Pacific halibut in and off Alaska, and an IFQ sablefish permit authorizes participation in most fixed-gear sablefish fisheries off Alaska. IFQ permits are issued annually to persons holding Pacific halibut and sablefish QS, or to those persons who are recipients of IFQ transfers from QS holders.

#### Actions Implemented by this Rule

##### Action 1: Aleutian Islands CQE Program

Since the inception of the IFQ Program, many residents of Alaska's small, remote, coastal communities who held QS have transferred their QS to non-community residents or

moved out of these communities. As a result, the number of resident QS holders has declined substantially in most remote coastal communities throughout Alaska. This transfer of halibut and sablefish QS and the associated fishing effort from the small, remote, coastal communities has limited the ability of residents to locally purchase or lease QS and reduced the diversity of fisheries to which fishermen in these communities have access. The ability of fishermen in these communities to purchase QS or maintain existing QS may be limited by factors shared among and unique to each community. Although the reasons for decreasing QS holdings in a community may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries. The substantial decline in the number of resident QS holders and the total amount of QS held by residents of small, remote, coastal communities may have aggravated unemployment and related social and economic conditions in those communities (see North Pacific Fishery Management Council. 2010. Review of the CQE Program under the Halibut/Sablefish IFQ Program. Anchorage, Alaska. March 2010. This document is available from the Council [see ADDRESSES]).

In 2001, the Council recognized that a number of small, remote, coastal communities, particularly in the GOA, were struggling to remain economically viable. The Council developed the CQE Program to provide these communities with long-term opportunities to access the halibut and sablefish resources. In 2002, the Council recommended the CQE Program in the GOA as Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (GOA FMP)) and an amendment to the IFQ Program. NMFS implemented the program in 2004 (69 FR 23681, April 30, 2004). The CQE Program allows small, remote, coastal communities that meet historic participation criteria in the halibut and sablefish fisheries to purchase and hold catcher vessel halibut QS in halibut Areas 2C, 3A, and 3B, and catcher vessel sablefish QS in the

GOA. A comprehensive explanation of CQE Program provisions can be found in the final rule implementing the CQE program (69 FR 23681, April 30, 2004).

The communities are eligible to participate in the CQE Program once they are represented by a CQE, which is a NMFS-approved non-profit organization. The CQE receives the QS by transfer and becomes the holder of the QS. NMFS issues the corresponding IFQ annually to the CQE. Once the CQE holds QS, the CQE can lease the annual IFQ resulting from the CQE-held QS to individual community residents. Individual community residents who lease annual IFQ from the CQE can use IFQ revenue to purchase their own QS. With certain exceptions, the QS must remain with the CQE. This program structure creates a permanent asset for the community to use. The structure promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries. The Council believed, and NMFS agrees, that both the CQE and non-CQE-held QS are important in terms of providing community residents fishing access that promotes the economic health of communities.

In 2002, the Council recommended the CQE Program for the GOA, but not for the BSAI. When the CQE Program was initially adopted by the Council, and implemented by NMFS, it was specifically intended to provide opportunities to GOA communities that had a historic dependence on the halibut and sablefish fisheries in the GOA. The Council considered but did not recommend applying the CQE Program to the BSAI because nearly all small, remote, coastal communities located in the BSAI also participate in the Western Alaska Community Development Quota Program (CDQ Program) that is authorized under section 305(i) of the Magnuson-Stevens Act. The CDQ Program allocates a percentage of all BSAI quotas for groundfish, prohibited species, halibut and crab to CDQ groups that represent 65 coastal

communities throughout the BSAI. This allocation to the CDQ Program allows the distribution of benefits from that allocation to be shared among the residents of the CDQ Program communities. In contrast, the CQE Program requires communities to purchase halibut and sablefish QS for use by community residents. At the time the Council recommended, and NMFS implemented, the CQE Program for the GOA, communities located in the BSAI did not meet the geographic scope, or intent, of the CQE Program.

Amendment 102 amends the BSAI FMP and this final rule revises halibut and sablefish IFQ Program regulations to allow a designated non-profit organization to purchase and hold catcher vessel QS on behalf of any rural community located adjacent to the coast of the Aleutian Islands (defined in regulations at § 679.2 as the Aleutian Islands Subarea of the BSAI) that meets specific qualification criteria. This final rule revises Federal regulations at §§ 679.2, 679.5, 679.41, 679.42, and Table 21 to part 679 to authorize an Aleutian Islands CQE to purchase a limited amount of Area 4B halibut and Aleutian Islands sablefish QS and lease the resulting IFQ.

The Council initiated the analysis to develop a CQE Program for the Aleutian Islands after receiving a proposal from the Adak Community Development Corporation (ACDC) in January of 2010. Specifically, ACDC requested that the Council modify the existing CQE Program to allow ACDC to use revenues generated from its holdings of Western Aleutian Islands golden king crab to purchase Area 4B halibut and Aleutian Islands sablefish QS for use by fishery participants delivering to Adak, AK. Under regulations established for the BSAI Crab Rationalization Program (70 FR 10174, March 2, 2005), the Adak Community Entity is designated (50 CFR 680.2) to receive an exclusive allocation of 10 percent of the total allowable catch issued for Western Aleutian Islands golden king crab (§ 680.40(a)(1)). ACDC was formed by representatives of the community of Adak as the Adak Community Entity to promote the



development of fishery related resources, infrastructure, and assets for the community of Adak. The purchase of Area 4B halibut and Aleutian Islands sablefish QS would be consistent with those goals.

As described in the proposed rule to implement Amendment 102 (78 FR 68390, November 14, 2013), the Council recognized that there may be opportunity for Adak or other similarly situated communities in the Aleutian Islands to maintain and improve access to commercial halibut and sablefish fisheries through a community QS holding program similar to the GOA CQE Program. In February 2012, the Council recommended establishing a CQE Program in the Aleutian Islands that would be similar to the current CQE Program in the GOA. When the Council was requested to consider implementing a CQE program in the Aleutian Islands, there was no similar request for the Bering Sea. Therefore, the Council did not develop a CQE Program for the Bering Sea.

The Council considered comments from the public, NMFS, and the State of Alaska, and incorporated the foundation of the GOA CQE program in its recommendation for the Aleutian Islands CQE Program. As noted earlier, the GOA CQE Program was developed to provide harvest opportunities for small, remote, coastal communities that lacked access to fishery resources. The Aleutian Islands CQE Program is intended to meet that same purpose.

The Council included provisions of the current GOA CQE Program in the Aleutian Islands CQE Program, as the goals of the programs are similar. After reviewing the applicable criteria for the GOA CQE Program, the Council and NMFS found that the Aleutian Islands CQE Program required only limited changes from the GOA CQE Program regulations. Therefore, the basic provisions for the Aleutian Islands CQE Program are similar to those described in the final rule implementing the CQE Program for GOA communities (69 FR 23681, April 30, 2004), and

as amended by the final rule implementing Amendment 94 to the GOA FMP and associated regulatory amendments (78 FR 33243, June 4, 2013). Additional information on the criteria considered in developing the Aleutian Islands CQE Program is provided in the proposed rule and in Section 2.6.2 of the RIR prepared for this action (see ADDRESSES). The provisions of the Aleutian Islands CQE Program are briefly summarized here.

## 1. Eligible Community

The Amendment and the final rule list the criteria a potentially eligible community must meet to participate in the Aleutian Islands CQE Program. An evaluation of the criteria indicates no communities in the Aleutian Islands other than Adak will satisfy the criteria to participate in the CQE program. A description of Adak's eligibility for the Aleutian Islands CQE Program and the reasons other communities (Atka, Attu Station and CDQ communities) are not included are detailed in the Eligible Community section of the proposed rule preamble (78 FR 68390, November 14, 2013).

Under this final rule, Table 21 to part 679 is amended to include Adak as the only eligible Aleutian Islands CQE community. This regulatory amendment ensures that if an Aleutian Islands community other than Adak appears to meet the eligibility criteria but is not specifically designated on the list of communities adopted by the Council, then that community would have to apply directly to the Council to be included. In this event, the Council may modify the list of eligible communities adopted by the Council through a regulatory amendment.

## 2. Community Quota Entity

This final rule modifies the definition of a CQE at § 679.2 to specify that in addition to meeting the eligibility criteria currently defined at § 679.2 and § 679.41(l), an Aleutian Islands CQE also needs to be the non-profit corporation defined at § 680.2 as the Adak Community

Entity that is formed for the purpose of holding the allocation of Western Aleutian Islands golden king crab made to Adak under the provisions of § 680.40(a)(1). CQE Program regulations at § 679.2 and § 679.41(l) define a CQE as a non-profit organization incorporated under the laws of the State of Alaska for the purpose of transferring, holding, and managing QS for an eligible community. Since Adak is the only community that is eligible in the Aleutian Islands CQE Program, the provision identifying the non-profit organization that can serve as the CQE for the community of Adak is specific to Adak. The current Adak Community Entity is ACDC. The Council recommended that the entity eligible to hold the Western Aleutian Islands golden king crab allocation (i.e., the Adak Community Entity) serve as the eligible CQE for Adak, because the overall responsibility of the entity is to hold an exclusive fishery allocation for use on behalf of Adak. This responsibility is identical to the responsibility of a non-profit organization that serves as a CQE in the GOA CQE Program.

An Aleutian Islands CQE must meet the three existing requirements that define a CQE at § 679.2. First, the non-profit organization needs to be incorporated after April 10, 2002, the date the Council took final action on the GOA CQE Program. Second, the community represented by the non-profit organization needs to be listed in Table 21 to part 679. Third, the CQE needs to be approved by NMFS to obtain QS by transfer and to hold QS as well as to lease IFQ resulting from the QS on behalf of an eligible community (see regulations at § 679.41(l) for the CQE application process).

ACDC meets the first requirement for a CQE defined at § 679.2. If ACDC dissolves, or otherwise ceases to be designated as the Adak Community Entity, a new Adak Community Entity could form to hold the Western Aleutian Islands golden king crab allocation and represent Adak for purposes of the Aleutian Islands CQE Program. This new entity would need to have

been incorporated after April 10, 2002, to meet the first requirement for a CQE. This final rule amends Table 21 to part 679 to list Adak, to meet the second requirement for a CQE, and the Aleutian Islands CQE will need to be approved by NMFS under existing regulations at § 679.41(l)(3) to meet the third requirement.

This final rule retains the regulation at § 679.41(l)(3) (Transfer of QS to CQEs) specifying that the non-profit organization (i.e., ACDC) must apply to NMFS for eligibility as a CQE. The Administrative Oversight section of the proposed rule preamble explains the specific procedure a community must follow to demonstrate its support for a CQE. Once an application to become a CQE has been approved, then that CQE is eligible to receive and hold QS for community members to use as IFQ. With certain exceptions, the QS remains with the CQE (see the Transfer and Use Restrictions section in the proposed rule preamble for additional detail). NMFS will issue the IFQ annually to the CQE. An approved CQE can lease IFQ under the mechanisms described in § 679.41 and § 679.42 (see the Transfer and Use Restrictions section in the proposed rule preamble for additional detail).

Existing regulations at § 679.41(l)(2) specify that a community cannot be represented by more than one CQE. This final rule applies this provision to the Aleutian Islands.

### 3. Individual Community Use Caps

Community use caps limit the amount of halibut QS and sablefish QS that each CQE can purchase and hold on behalf of an eligible community.

This final rule establishes CQE use caps for halibut and sablefish, respectively, equal to 15 percent of the Area 4B halibut QS pool (1,392,716 QS units) and 15 percent of the Aleutian Islands sablefish QS pool (4,789,874 QS units). This final rule modifies regulations at § 679.42(e)(6) and (f)(5) to establish the applicable use caps for the Aleutian Islands CQE. The

use caps also address existing QS holders' concerns that shifting potential QS holdings to communities could disadvantage individual fishermen by reducing the amount of QS available to them in the QS market. In examining appropriate use caps, the Council considered both the problem statement and the current level of exploitation of the halibut and sablefish resource. On average from 2005 through 2010 about 45 percent of the Aleutian Islands sablefish IFQ and about 15 percent of the Area 4B halibut IFQ were not harvested. Thus the Council determined and NMFS agrees that the 15 percent use caps are of sufficient size to accommodate the purchase and holding of QS for the community's benefit and existing harvests by individual fishermen. The Individual Community Use Caps section of the proposed rule preamble and section 2.6.2.3 of the Analysis provide additional detail on the rationale for Aleutian Islands CQE Program use caps.

This final rule modifies Table 21 to this part and adds a regulation at § 679.42(e)(9) to limit the transfer or use of Aleutian Islands sablefish QS by the Aleutian Islands CQE representing the eligible community of Adak to those management areas that are adjacent to the CQE eligible community in the Aleutian Islands. Only IFQ regulatory Area 4B, for halibut, and IFQ regulatory area Aleutian Islands, for sablefish, are adjacent to the Aleutian Islands. These limits support a principal goal of the Council in creating the Aleutian Islands CQE Program, which is to improve the access of residents of the eligible community to local resources.

#### 4. Cumulative Community Use Cap

This final rule establishes a 15 percent cumulative community use cap that limits the amount of halibut QS and sablefish QS that all Aleutian Islands CQEs combined can purchase and hold collectively. Under this final action, Adak is the only eligible community; therefore, the individual CQE community use cap of 15 percent of the Area 4B halibut QS pool (1,392,716

QS units) and 15 percent of the Aleutian Islands sablefish QS pool (4,789,874 QS units) also serve as the cumulative CQE community use cap. See the Cumulative Community Use Cap section of the proposed rule preamble for additional details on the rationale for the cumulative community use cap.

This final rule modifies regulations at § 679.42(e)(6) and (f)(5) to remove regulatory text describing the mechanism for phasing in the use cap for GOA CQE communities that is outdated and no longer applicable. This final rule clarifies that GOA CQEs are now subject to a 21 percent use cap for halibut and sablefish QS in the GOA.

## 5. Transfer and Use Restrictions

This final rule establishes restrictions in the Aleutian Islands on the type of blocked QS that a CQE may purchase; the type of vessel category QS that a CQE may purchase; the permanent transfer of QS from a CQE once the CQE holds QS; who can lease IFQ from a CQE; how much IFQ can be used by an individual lessee; and how much IFQ can be used on an individual vessel. See the Transfer and Use Restrictions section of the proposed rule preamble for additional detail on the purpose for, and effects of, these restrictions on the Aleutian Islands CQE Program.

### a. Block Limits

Two block provisions apply to an Aleutian Islands CQE under this final rule. The first block provision allows an Aleutian Islands CQE to purchase both blocked and unblocked Area 4B halibut QS and Aleutian Islands sablefish QS, without restrictions on the size of blocked QS that may be held. Blocked QS are aggregates of small units of QS that were designated as blocks when they were initially issued and that cannot be subdivided upon transfer.

Because existing regulations at § 679.41(e)(4) and (5) do not limit the size of Area 4B halibut and Aleutian Islands sablefish QS blocks that a CQE can hold, no change in regulations is necessary to implement this provision.

The second block provision limits the number of QS blocks the Aleutian Islands CQE may hold to a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each IFQ regulatory area for halibut and sablefish. No change to existing regulations at § 679.42(g)(1)(ii) is necessary to implement this provision.

#### b. Vessel Category Restrictions

This final rule allows an Aleutian Islands CQE to purchase and hold all categories of Area 4B halibut catcher vessel QS (B, C, and D share QS), and all categories of Aleutian Islands sablefish catcher vessel QS (B and C share QS). Because existing regulations at § 679.41(g)(5) restrict CQEs from holding D share QS only in Area 2C, and not in Area 4B, no changes to the regulations are necessary to implement this provision.

This final rule does not limit the amount of D share halibut QS that an Aleutian Islands CQE may hold because residents of the only CQE eligible community in the Aleutian Islands (i.e., Adak) were not initially issued any halibut or sablefish QS. Because existing regulations at § 679.41(g)(5)(iii) restrict CQEs from holding more than a specific amount of D share QS in Area 3A, no changes to the regulations are necessary to implement this provision.

This final rule modifies regulations at § 679.42(a)(2)(iii) to specify that IFQ derived from B and C share catcher vessel QS held by the Aleutian Islands CQE can be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision applies only to QS held by the CQE. The vessel category requirements for use of the QS would apply if the QS were transferred from a CQE to a qualified recipient that was not a CQE.

Action 2 of this final rule allows Area 4B D share halibut IFQ to be harvested on a vessel less than or equal to 60 ft (18.3 m) LOA. This limitation on the size of vessel that may be used to harvest IFQ derived from D share halibut QS applies to both CQE and non-CQE D share QS holders in Area 4B, and is addressed in the section on Action 2 in this preamble.

c. Sale Restrictions

Under this final rule, the regulations that apply to a CQE transfer of QS in the GOA (§ 679.41(g)(7) and (8)) will apply to a CQE transfer of QS in the Aleutian Islands. An Aleutian Islands CQE may only transfer its catcher vessel QS to an individual or initial QS recipient eligible to receive QS under the IFQ Program or to another eligible CQE in the Aleutian Islands CQE Program. Under this final rule, Adak is the only community eligible to be represented by a CQE in the Aleutian Islands; therefore a CQE representing Adak is only able to transfer its catcher vessel QS to an individual or initial recipient. An Aleutian Islands CQE cannot transfer Area 4B halibut QS or Aleutian Islands sablefish QS to any of the GOA CQEs eligible to hold QS under the GOA CQE Program because those CQEs are prohibited under existing regulations from purchasing QS outside the GOA.

Regulations at § 679.41(g)(7) specify the conditions under which a CQE may transfer QS: 1) to generate revenue to provide funds to meet administrative costs for managing the community QS holdings; 2) to generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries; 3) to generate revenue to purchase QS to yield IFQ for use by community residents; 4) to dissolve the CQE; or 5) as a result of a court order, operation of law, or as part of a security agreement.

Existing regulations at § 679.41(g)(8) require that if the Regional Administrator determines that a CQE transferred QS for purposes other than to sustain, improve, or expand the



opportunities for community residents, then 1) the CQE must divest itself of any remaining QS holdings and will not be eligible to receive QS by transfer for a period of 3 calendar years after the effective date of final agency action on the Regional Administrator's determination; and 2) the Regional Administrator will not approve a CQE to represent the eligible community in whose name the CQE transferred QS for a period of 3 years after the effective date of the final agency action on the Regional Administrator's determination. The 3-year restriction is intended to discourage CQEs from speculating in the QS market or using potential assets to fund other unrelated projects.

These restrictions encourage the CQE community to hold its QS as a long-term asset to provide access to and benefits from fisheries over time. The restrictions provide the CQE some flexibility to respond to unanticipated circumstances and to act in its best interest and the interests of community residents.

Under this final rule, NMFS will approve a transfer of QS held by an Aleutian Islands CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer (see § 679.41(1)(3)(v)(E)(4)). This authorization needs to be in the form of a signature on the Application for Transfer of QS/IFQ to or from a Community Quota Entity (CQE) by an authorized representative of the governing body of the community. The purpose of the authorization is to ensure that the community is fully aware of the transfer because of the consequences of the restrictions explained above.

Under existing regulations applicable to CQEs, if the Regional Administrator determines that a transfer of QS was made by the Aleutian Islands CQE for reasons other than to sustain, improve, or expand the opportunities for community residents, or to comply with a court order, operation of law, or security agreement, NMFS will withhold annual IFQ permits on any

remaining QS held by the CQE on behalf of that community and will disqualify that CQE from holding QS on behalf of that community for 3 calendar years after the effective date of final agency action on the Regional Administrator's determination (see § 679.41(g)(8)).

As under existing regulations applicable to CQEs, NMFS will not impose this restriction on an Aleutian Islands CQE until the CQE has received full administrative due process, including notice of the potential action and the opportunity to be heard. The procedures for appeal are provided at § 679.43. No regulatory changes are required to implement these existing CQE requirements.

#### d. Use Restrictions

This final rule modifies regulations at § 679.41(g)(6) and § 679.42(e)(8) and (f)(7) to establish limitations on the use of halibut and sablefish QS and IFQ held by an Aleutian Islands CQE and to provide, for a limited time, additional flexibility on the use of IFQ derived from QS held by an Aleutian Islands CQE.

An Aleutian Islands CQE is allowed to lease any IFQ derived from their QS to either an eligible community resident of Adak or a non-resident for a period of up to 5 years after the effective date of this final rule. This additional flexibility was allowed because a limited number of harvesters that have landed catch in Adak in the past were Adak residents. After the 5 year period, the CQE is required to lease the annual IFQ derived from QS it holds only to an eligible community resident of Adak. The intent of this requirement is to tie the potential long-term benefits of QS held by an Aleutian Island CQE to the residents of Adak.

For GOA CQEs, an eligible community resident is defined at § 679.2 as an individual who is a citizen of the United States; maintains a domicile in one of the communities listed in Table 21 to part 679 for the 12 consecutive months preceding the time when the assertion of

residence is made, and who is not claiming residency in another community, state, territory, or country; and is an IFQ crew member. An IFQ crew member is defined in regulations at § 679.2 as any individual who has at least 150 days experience working as part of the harvesting crew in any U.S. commercial fishery, or any individual who receives an initial allocation of QS. IFQ Program regulations at § 679.41(d) require that for an individual to be eligible to receive QS or IFQ by transfer, that individual must submit an Application for Eligibility to Receive QS/IFQ to obtain a Transfer Eligibility Certificate (TEC). A TEC requires that the individual be a U.S. citizen and approved by NMFS as an IFQ crew member.

This final rule modifies the definition of an eligible community resident at § 679.2 to create an exception to the requirement that an individual needs to be an IFQ crew member when that person is receiving halibut or sablefish IFQ that is derived from QS held by an Aleutian Islands CQE. This change allows an Aleutian Islands CQE to lease IFQ to an individual who is a citizen of the United States and who has maintained a domicile in one of the communities listed in Table 21 to part 679 for the 12 consecutive months preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, but is not an “IFQ crew member” and so may have less than 150 days experience on board a vessel working as part of the harvesting crew in a U.S. commercial fishery. The individual will still need to obtain a TEC; however, this final rule also modifies regulations at § 679.41(d)(6) to provide that NMFS will not disapprove an application for a TEC on the basis that a person has fewer than 150 days of experience working as an IFQ crew member if the person attests that he or she is an eligible community resident of Adak and that person is receiving only IFQ from an Aleutian Islands CQE for Area 4B halibut or Aleutian Islands sablefish. The Transfer and Use Restrictions section of the proposed rule’s preamble

describes the process for applying to receive a transfer of IFQ from the Aleutian Islands CQE and the process NMFS will use to review and approve the transfer applications.

This final rule retains regulations at § 679.42(i)(5) specifying that an individual who receives IFQ derived from QS held by a CQE may not designate a hired master to fish the community IFQ: the individual must be on board the vessel when the IFQ is being fished. Individuals who hold leases of IFQ from communities will be considered IFQ permit holders and will be subject to the regulations that govern other permit holders, including the payment of annual fees as required under § 679.45.

#### e. Individual and Vessel Use Caps

This final rule does not modify the vessel use caps currently applicable to vessels fishing either halibut or sablefish IFQ derived from CQE-held QS. Under regulations at § 679.42(h), a vessel may not be used to harvest more than 50,000 pounds (22.7 mt) of IFQ derived from QS held by a CQE. In addition, a vessel that harvests IFQ derived from CQE-held QS is subject to the overall vessel use caps described at § 679.42(h). In effect, a vessel cannot use more than 50,000 pounds of halibut IFQ and 50,000 pounds of sablefish IFQ derived from QS held by a CQE during the fishing year. A vessel can be used to harvest additional IFQ from non-CQE-held QS up to the overall vessel use caps applicable in the IFQ Program, if the overall vessel use caps are greater than 50,000 pounds. If the vessel use caps in the IFQ Program are lower than 50,000 pounds in a given year, then the lowest vessel use cap will apply. Because existing regulations at § 679.42(h) apply to all CQEs, which includes the Aleutian Islands CQE, no additional regulatory changes are required to implement this provision.

#### 6. Joint and Several Liability for Violations

Consistent with current regulations at § 679.42(h)(4), both the Aleutian Islands CQE and the individual fisherman to whom the CQE leases its IFQ will be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is fishing the CQE leased IFQ. This joint and several liability is analogous to the joint and several liability currently imposed on IFQ permit holders and any hired masters fishing the permit holders' IFQ. Because existing regulations at § 679.42(h)(4) apply to all CQEs, including the Aleutian Islands CQE, no additional regulatory changes are required to implement this provision.

## 7. Performance Standards

The performance standards for the Aleutian Islands CQE Program will be the same as those established for the GOA CQE Program and are described in the Performance Standards section of the proposed rule preamble and Section 2.6.2.5 of the RIR (see ADDRESSES). These performance standards serve as guidance to the public in how the Council and NMFS intend that CQE QS and IFQ be used. The performance standards describe the CQE Program goals and allow the CQE to describe the steps to meet those goals. As guidance, compliance is voluntary and not implemented in regulation. CQE performance is monitored through the CQE annual report and evaluated through periodic review of the CQE Program.

## 8. Administrative Oversight

This final rule applies administrative oversight provisions applicable to GOA CQEs to the Aleutian Islands CQE at § 679.41 (l)(3)) and 679.5(t). Implementation of the Aleutian Islands CQE requires that NMFS 1) review an application of eligibility for a non-profit organization seeking to be qualified as a CQE for a community in the Aleutian Islands and certify the CQE as eligible; and 2) review an annual report detailing the use of QS and IFQ by the CQE and Aleutian Islands fishery participants. See the Administrative Oversight section of

the proposed rule preamble for additional detail on these requirements. If a CQE does not remain in compliance, (e.g., by failing to submit a complete annual report) then NMFS can initiate administrative proceedings to deny the transfer of QS to or IFQ from the CQE. As with other administrative determinations under the IFQ Program, any such determination could be appealed under the procedures set forth in regulations at § 679.43.

a. CQE Eligibility Application

This final rule requires an Aleutian Islands community to form a non-profit corporation under the laws of the State of Alaska before submitting an application to NMFS for approval to be eligible as a CQE consistent with existing regulations at § 679.41(1)(3)(i). Under the CQE Program for the Aleutian Islands, the Council identified the CQE for the community of Adak as the Adak Community Entity approved by NMFS to hold the allocation of Western Aleutian Islands golden king crab provided under regulations at § 680.40(a)(1). The non-profit corporation that currently holds the Western Aleutian Islands golden king crab allocation is ACDC. Even though ACDC is the Adak Community Entity, ACDC is still required to submit an application to the NMFS Regional Administrator that contains specific eligibility information. Should the holder of the Western Aleutian Islands golden king crab allocation change, then a new CQE would need to be incorporated and apply to NMFS to be an eligible CQE.

To minimize potential conflict that may exist among non-profit entities seeking qualification as a CQE, NMFS will not consider a recommendation from a community governing body supporting more than one non-profit entity to hold QS on behalf of that community. The specific governing body that provides the recommendation is defined in regulations at § 679.41(1)(3)(v). Because Adak is the only identified eligible community in the Aleutian Islands that qualifies under this final rule, and that community is incorporated as a municipality under

State of Alaska statutes, the City Council of Adak will recommend the non-profit organization to serve as the CQE for that community.

Under regulations at § 679.41(l)(3), a non-profit entity seeking approval from the Regional Administrator to become an Aleutian Islands CQE must submit a complete application to NMFS. This final rule modifies the application process at § 679.41(l)(3)(iv) to require a non-profit entity to provide a statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents and non-residents of Adak, including procedures used to solicit requests from eligible community residents and non-residents to lease IFQ; and criteria used to determine the distribution of IFQ leases among eligible community residents and non-residents and the relative weighting of those criteria. Because this final rule allows an Aleutian Islands CQE to lease IFQ to eligible community residents and non-residents for the first 5 years after the effective date of the final rule, this modification clarifies the mechanisms for considering and distributing IFQ among eligible community residents and non-residents of Adak.

b. Annual Report

Consistent with current annual reporting requirements applicable to CQEs at § 679.5(t), by January 31 the Aleutian Islands CQE will need to submit an annual report to NMFS and to the governing body for the community represented by the CQE (i.e., City of Adak). The report must detail the use of QS and IFQ by the CQE and fishery participants during the previous year's fishing season. This final rule modifies § 679.5(t)(5)(v)(B), (C), (E), and (J) to require the Aleutian Islands CQE to provide a description of the process used to solicit applications from eligible community residents and non-residents; the total number of eligible community residents and non-residents who applied to use IFQ; a detailed description of the criteria used by the CQE

to distribute IFQ among eligible community residents and non-residents who applied to use IFQ; and any payments made to the CQE for use of the IFQ by eligible community residents and non-residents. These revisions are necessary to gather information on the use of IFQ by persons who are not residents of Adak during the first 5 years after the effective date of this final rule. These provisions do not affect GOA CQEs. Existing regulations at § 679.42(e)(8) and (f)(7) prohibit persons other than eligible community residents from fishing the IFQ held by GOA CQEs; therefore, no additional reporting of information on non-residents is required from GOA CQEs.

Consistent with regulations applicable to CQEs at § 679.41(l)(3), if an Aleutian Islands CQE fails to submit a timely and complete annual report, or if other information indicates that the CQE is not adhering to the procedures for distributing or managing QS and IFQ on behalf of a community as established under its application and these regulations, then NMFS will initiate an administrative action to suspend the ability of the CQE to transfer QS and IFQ, and to receive additional QS by transfer. This action is implemented consistent with the administrative review procedures provided at § 679.43.

#### Action 2: Allow D Share IFQ to be Fished on Category C Vessels

The purpose of Action 2 is to allow both CQE and non-CQE D share halibut IFQ to be fished on vessels less than or equal to 60 ft. LOA (vessel category C) in IFQ regulatory area 4B. This action is commonly known as a “fish-up” action because it allows IFQ derived from QS designated for a small vessel category to be fished “up” on a larger vessel category. In 2007, NMFS implemented a similar action for Areas 3B and 4C (72 FR 44795, August 9, 2007).

The proposed rule and the RIR/FRFA prepared for Action 2 (See ADDRESSES) describe that this action is intended to address economic hardship and safety concerns resulting from fishing on small vessels. This final rule relieves a restriction placed on IFQ fishery participants



in Area 4B and furthers the Council's and NMFS' goals for the IFQ Program by effectively increasing the amount of IFQ that may be harvested by category C vessels.

This final rule modifies regulations at § 679.42(a)(2)(iv) to allow IFQ derived from Area 4B halibut D share QS to be fished on vessels less than or equal to 60 ft (18.3 m) LOA.

#### Comments and Responses

During the public comment period on the Notice of Availability for Amendment 102, and the proposed rule to revise the halibut and sablefish IFQ Program regulations, NMFS received nine comment letters. Two letters from a member of the public expressed a general dislike of fishery management policies that are outside the scope of this action. Three comment letters addressed Amendment 102 to establish a CQE in the Aleutian Islands (Action 1). One letter supported Amendment 102 and the implementation of Action 1 in this final rule. Two comment letters did not support Amendment 102 or the implementation of Action 1 in this final rule. Four comment letters supported the proposed action to allow vessel D share QS to be fished on category C vessels (Action 2). Two of these comment letters were submitted by participants in the halibut IFQ fishery. No changes were made to this final rule in response to the comment letters received. NMFS' response to the substantive public comments on Amendment 102 and the proposed rule is presented below.

Comment 1: The commenter supports adoption of the final rule to implement Amendment 102 as soon as possible to allow acquisition of QS, preparation of the CQE application, and timely certification of the CQE for the 2014 IFQ fishery season. The commenter states that the proposed rule correctly captures the intent of the Council's recommendation to create an Aleutian Islands CQE Program.

Response: NMFS acknowledges the comment.

Comment 2: Amendment 102 ignores National Standard 4 of the Magnuson-Stevens Act, which specifies that conservation and management measures shall not discriminate between residents of different states and that any allocation of fishing privileges must be fair and equitable. Instead, the proposed action unfairly and unlawfully relies on National Standard 8 of the Magnuson-Stevens Act, which specifies that conservation and management measures shall take into account the importance of fishery resources to fishing communities and provide for the sustained participation of such communities. Amendment 102 benefits selected Alaskans at the expense of other non-Alaskan residents that participate in the fishery. This is unfair, discriminatory, and contrary to the requirements of National Standard 4.

Response: The Council and NMFS have determined that Amendment 102 is consistent with the requirements of the Magnuson-Stevens Act. This Amendment specifically defines an eligible community that may be included in the Aleutian Islands CQE Program and cannot help but exclude others. However, those that have been excluded from participation in the program include both Alaskan and non-Alaskan communities, so this action is not predicated upon any effort to discriminate between residents of different states.

As described in the proposed rule preamble (78 FR 68390, November 14, 2013) and in section 2.1 of the RIR, this final rule promotes the Council's objective to provide an opportunity for Adak to improve access to the commercial halibut and sablefish fisheries in the Aleutian Islands and to provide stability to shoreside processing operations in Adak through a structure similar to the GOA CQE Program. The Aleut Corporation and the Adak Community Development Corporation have invested significant effort into developing Adak as a commercial center and civilian community with a private sector economy focused heavily on commercial fishing (see section 2.4.5 of the RIR for additional detail). Section 2.6.2.4 of the RIR notes that

residents of Adak were not initially issued halibut and sablefish QS during implementation of the IFQ Program, and the costs of purchasing QS have restricted the ability of residents to participate in the halibut and sablefish IFQ fisheries. Individuals in small, remote communities such as Adak may realize a higher cost of participation than larger communities with road access to markets (see section 2.6.2.4 of the RIR). The Council and NMFS intend for Amendment 102 and this final rule to provide fishing opportunities for residents of Adak, as well as to minimize the adverse economic impacts of the costs of entering the current IFQ program for CQE Program fishery participants.

The Council and NMFS have determined that Amendment 102 and this final rule meet the objectives of National Standard 8 by facilitating long-term access to and participation in the commercial halibut and sablefish fisheries by residents of a small, remote, coastal community in the Aleutian Islands. The mechanism implemented by this final rule to help facilitate participation is to allow the Aleutian Islands CQE to purchase a limited amount of QS and lease the annual IFQ to community residents. Amendment 102 and this final rule are intended to benefit one community, Adak, which is the only community in the area with historical participation in the halibut and sablefish fisheries that is not also eligible under the western Alaska Community Development Quota (CDQ) Program. The Council and NMFS determined that under Amendment 102 and this final rule, individuals residing in communities other than Adak will still realize the majority of the benefit from halibut QS in Area 4B and sablefish QS in the Aleutian Islands, but more of the revenues will be captured in the community of Adak than are currently, and less in the larger, more accessible communities, or in communities outside Alaska, where other QS holders reside (see section 3.1 of the RIR for additional detail).

Comment 3: Two commenters asserted that an Aleutian Islands CQE Program was unlikely to provide the intended benefits to the community of Adak. One commenter stated that Amendment 102 does not guarantee that Adak residents receiving benefits from QS held by the CQE will continue to live in Adak. The other commenter stated that Adak's reliance on a fishing economy is not sustainable in the long term.

Response: NMFS acknowledges the comments and agrees that Amendment 102 and this final rule do not guarantee that the community of Adak or residents of Adak will participate in, or receive benefits, from the IFQ fisheries in the Aleutian Islands. As described in the response to comment 2, Amendment 102 and this final rule provide an opportunity for a non-profit entity representing Adak to purchase QS on the open market. The Council determined, and NMFS agrees, that Amendment 102 and this final rule may provide an opportunity for Adak to improve access to the commercial halibut and sablefish fisheries in the Aleutian Islands and to provide stability to shoreside processing operations in Adak through a structure similar to the GOA CQE Program.

NMFS notes that a number of small, remote, coastal communities in Alaska are reliant on commercial fisheries for a significant portion of their economic activity. This reliance is reasonable given the communities' proximity to salt water, lack of road access to larger communities, and limited infrastructure. As described in section 2.4.5 of the RIR and in the response to comment 2, the Aleut Corporation and ACDC have pursued a number of strategies to develop community participation in harvesting and processing activities in a broad range of fisheries in the Aleutian Islands. The Council and NMFS have determined that Amendment 102 and this final rule may further aid in the development of seafood harvesting and processing activities within Adak.

Comment 4: Two commenters did not support the proposed requirement for a non-profit organization (i.e., the Aleutian Islands CQE) to be the designated entity to purchase and hold halibut and sablefish QS for the Aleutian Islands CQE. One commenter noted that a non-profit CQE is exempt from paying taxes, and this would give the organization a competitive advantage over non-CQE fishermen in purchasing QS. This advantage could flow to a limited number of eligible lessees of CQE IFQ, who could use their IFQ-derived income to purchase QS. The second commenter suggested that non-profit organizations may not provide sufficient benefits to warrant their tax-exempt status.

Response: The Council and NMFS determined that a non-profit entity is the appropriate type of entity to hold halibut and sablefish QS on behalf of Adak for the Aleutian Islands CQE Program. This determination was based on the Council's consideration of the GOA CQE Program and the objectives for the Aleutian Islands CQE Program. This response addresses the rationale for determining that a non-profit entity is appropriate as the Aleutian Islands CQE. NMFS notes that the decision to grant non-profit organizations tax-exempt status is based on State of Alaska law and is outside NMFS's authority and the scope of this action.

The proposed rule to implement the GOA CQE Program describes that the Council selected a non-profit entity as the appropriate holder of QS for communities based on recommendations from GOA communities (68 FR 59564, October 16, 2003). These recommendations indicated that a non-profit entity could be more flexible and cost-effective than either a for-profit corporation or an existing governmental body.

The preamble to the proposed rule and section 2.6.2.2 of the RIR describe that the GOA CQE Program is premised on the ability of a non-profit entity to purchase and hold halibut and sablefish catcher vessel QS on behalf of a community for lease to and use by community

residents. The intent of the Council in establishing the Program is to provide a long-term asset (i.e., halibut or sablefish QS) for individual and community use and benefit. The QS cannot be sold unless it improves the community's ability to enhance or expand its participation in the CQE Program (e.g., the CQE could sell some amount of QS at a price that would facilitate the purchase of more QS) (see § 679.41(g)(7)). Individual QS holders and for-profit corporations could leave the community, sell their QS, or otherwise act in their own best interest, rather than in the best interest of the community. The GOA CQE Program and the Aleutian Islands CQE Program are intended to ensure that some level of QS access remains for community residents for the long term. The Council determined, and NMFS agrees, that designating a non-profit entity to hold QS on behalf of the community best meets this objective.

As described in section 2.6.2.7 of the RIR and in the response to comment 2, NMFS does not anticipate that this final rule will have significant effects on individual participants in the IFQ fisheries or residents of non-CQE communities. NMFS expects that this final rule will allow some redistribution of QS because it is intended to have distributional effects among QS holders by promoting the transfer of QS from existing QS holders to the CQE.

The Council and NMFS considered the impacts of Amendment 102 and this final rule on non-CQE participants in the IFQ fisheries. Section 2.6.2.7 of the RIR notes that authorizing a CQE to purchase QS could create the potential for greater competition in the market for purchasing Area 4B halibut QS and Aleutian Islands sablefish QS, which could result in a higher QS price. However, a significant portion of the QS pool remains unused each year in these areas because the IFQ is not fully harvested, suggesting there is limited existing demand for QS. Section 2.6.2.3 of the RIR indicates that under the QS use caps implemented by this final rule, the Aleutian Islands CQE would be able to purchase QS that is not currently being used.

Therefore, NMFS expects potential competition between individual QS holders and the CQE would be limited.

Several other factors are also likely to limit the impact of the Aleutian Islands CQE Program on non-CQE fishery participants. The most important factors are that the CQE must purchase QS on the open market, only one community is eligible to participate, and the Adak CQE will be subject to QS purchase and use limits. Section 2.6.2.7 of the RIR notes that the cumulative community use caps of 15 percent of the QS pools for halibut and sablefish (see § 679.42(e)(4)(ii) and (f)(2)(ii)) and the block limits (see § 679.41(e)(4) and (5)) ensure that even if the Adak CQE purchases QS up to the program limits, non-CQE participants would continue to have access to the remaining QS pool without potential competition from CQEs.

Additionally, the Aleutian Islands CQE Program does not affect IFQ participants' access to QS in areas other than Area 4B for halibut and the Aleutian Islands for sablefish.

Section 2.6.4 of the RIR notes that if an Aleutian Islands CQE is provided the opportunity to purchase QS, then use of the resulting IFQ will provide economic benefits that are not currently realized. In addition, because current demand for QS in these areas is relatively low, including a CQE in the market for QS may benefit private sellers of QS.

Comment 5: Individuals who are not qualified to lease IFQ from the Aleutian Islands CQE would be disadvantaged compared to fishermen harvesting CQE-held IFQ, because non-CQE fishery participants are subject to more restrictive QS and IFQ transfer and limits. These restrictions include QS block and use limits, vessel category restrictions for harvesting IFQ, and eligibility to lease IFQ.

Response: In recommending transfer and use restrictions for the Aleutian Islands CQE Program, the Council and NMFS balanced the objective of promoting community access to QS

and IFQ with the intent to maintain entry-level opportunities for fishermen residing in other fishery-dependent communities, consistent with the goals of the IFQ Program. The Council and NMFS do not anticipate that the provisions of Amendment 102 implemented by this final rule will have significant effects on individual participants in the IFQ fisheries or residents of non-CQE communities (see the response to comment 4 and section 2.6.2.7 of the RIR for additional detail).

The rationale for each of the transfer and use provisions implemented by this final rule was examined in section 2.6.2.4 of the RIR for the action and described in the Transfer and Use Restrictions section of the proposed rule preamble. The rationale for the specific transfer and use provisions referenced by the commenter is summarized here.

The Council did not recommend, and NMFS does not establish, restrictions on the size of QS blocks the Aleutian Islands CQE can purchase. The Council and NMFS reviewed data on the number of and size of QS blocks in Area 4B and the Aleutian Islands and determined that implementing a block size restriction would greatly limit the QS available for purchase by the CQE (see Section 2.6.2.4 of the RIR for additional information). This final rule applies the same QS block limits to the Aleutian Islands CQE that apply to GOA CQEs because large portions of the QS in the Aleutian Islands are available only in blocked shares. Limiting the Aleutian Islands CQE to existing unblocked QS would effectively limit the QS available to a small portion of the QS pool that is typically higher priced than the more available blocked QS. The Council and NMFS determined that the potential impacts of its recommended block restrictions on new entrants to this fishery would be limited because not all QS is currently being used to harvest halibut and sablefish IFQ in Area 4B and the Aleutian Islands (see Transfer and Use Restrictions in the proposed rule preamble for additional detail).



This final rule applies the same regulations on the vessel categories of QS to the Aleutian Islands CQE that currently apply to CQEs in Areas 3A and 3B of the GOA. Specifically, under this final rule, the Aleutian Islands CQE could purchase and hold 1) all categories of Area 4B halibut catcher vessel QS (B, C, and D share QS); 2) all categories of Aleutian Islands sablefish catcher vessel QS (B and C share QS); and 3) any amount of Area 4B catcher vessel D share halibut QS, up to the program limit of 15 percent of the total QS pool. As described in the proposed rule and section 2.6.2.4 of the RIR, the Council and NMFS determined that allowing the Aleutian Islands CQE to hold D share QS would not conflict with new entrants in the Aleutian Islands IFQ fisheries, because there is likely to be minimal competition between individuals and the Aleutian Islands CQE for D share QS in the Area 4B halibut QS market. As described in the proposed rule, approximately 70 percent of the D share halibut QS in Area 4B is not used on an annual basis. This suggests that there is little market demand for D share QS in the Aleutian Islands.

This final rule allows IFQ derived from B and C catcher vessel share QS held by an Aleutian Islands CQE to be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision is consistent with the same provisions in the GOA CQE Program on which the Aleutians Islands CQE is modeled, and facilitates the use of IFQ on the wide range of vessel types that fish in Aleutian Islands communities.

This final rule establishes limitations on the use of QS and IFQ assigned to an Aleutian Islands CQE. These limitations are consistent with regulations for the GOA CQE Program, with minor modifications to provide additional flexibility on the use of IFQ derived from QS held by an Aleutian Islands CQE. This final rule allows an Aleutian Islands CQE to lease any IFQ derived from QS it holds to either eligible community residents of Adak or non-residents for a

period of up to 5 years after the effective date of the regulations. After the 5-year period, the CQE will be required to lease the IFQ derived from QS it holds only to eligible community residents of Adak. This final rule limits the period during which non-residents may lease IFQ from an Aleutian Islands CQE to explicitly tie the potential long-term benefits of QS held by an Aleutian Islands CQE to the residents of Adak. The five-year time period is intended to provide adequate time to accrue benefits to the community of Adak through IFQ deliveries, provide crew opportunities for residents, and earn revenue that could assist in the purchase of additional QS.

Under this final rule, an eligible community resident of an Aleutian Islands CQE community is relieved from the requirement to have 150 days of experience working as part of the harvesting crew in a U.S. commercial fishery in order to lease IFQ from the Adak CQE. This provision of the Aleutian Islands CQE Program is not limited to the first five years of the program, like the non-resident IFQ leasing provision. Removing the 150 days of experience requirement for eligible community residents of Adak accommodates younger residents of Adak who may seek employment but who lack 150 days of experience as a crew member. Many younger fishermen have experience operating a vessel out of Adak fishing subsistence halibut, but in the western Aleutian Islands there are few commercial fisheries in which they can gain the necessary number of days of experience as crew members, compared to what is available for residents of GOA communities. This is due in part to fewer fishermen operating out of the Aleutian Islands on whose vessels one might be employed as a crew member.

Comment 6: The Aleutian Islands CQE is not required to be an owner onboard, is allowed to lease out its IFQ, and is able to benefit from QS through multiple generations. In contrast, an individual who was not initially issued QS and purchased their QS is restricted by the owner onboard requirement and is not able to lease their IFQ. Furthermore, an individual QS

holder's beneficiaries do not receive the long-term benefit of the QS after the death of the QS holder. The QS holder's beneficiary may only lease the resulting IFQ for three years and after that time, the beneficiary must meet the eligibility requirements to hold QS and must be onboard the vessel when the IFQ is harvested, or they must transfer the QS.

Response: The comment refers to IFQ Program regulations at § 679.42(c) that require, with some exceptions, a catcher vessel QS holder to be onboard the vessel during harvest and offloading of IFQ derived from their QS. As described in the final rule to implement the IFQ Program, this requirement is intended to promote stewardship by providing active fishermen with a vested interest in the long-term productivity of the halibut and sablefish resources (58 FR 59375, November 9, 1993). By design, CQE community fishermen do not hold QS but instead are allowed to lease IFQ derived from CQE-held QS. However, the lessee is required by regulations at § 679.42(c) and § 679.42(h)(5) to be onboard the vessel fishing the IFQ leased from the CQE during harvest and offloading, consistent with the owner onboard objective for the IFQ Program (see the Transfer and Use Restrictions section of the proposed rule preamble for additional detail).

The commenter is correct that the Aleutian Islands CQE could lease IFQ to multiple generations of CQE community fishermen. NMFS notes this is consistent with the CQE Program objective to provide Adak with long-term opportunities to access the halibut and sablefish fisheries, as described in the proposed rule and in Section 2.1 of the RIR. Also see the response to comment 2.

The commenter contrasts the Aleutian Islands CQE objective to promote long-term QS holdings by the community entity with regulations at § 679.41(k) that impose a limit on the amount of time a non-CQE QS holder's beneficiary may hold the QS after the QS holder's death,

if the beneficiary is not otherwise eligible to hold QS under IFQ Program requirements. The final rule implementing the GOA CQE Program (68 FR 59564, October 16, 2003) and the proposed rule to implement Amendment 102 describe that the Council and NMFS have determined that the CQE Program structure promotes community access to QS to generate participation in, and fishery revenues from, the commercial halibut and sablefish fisheries. This is consistent with the goals for the IFQ Program (58 FR 59375, November 9, 1993). NMFS notes that the Council has identified specific objectives for the Aleutian Islands CQE Program and rationale for specific provisions that result in different requirements for CQE and non-CQE participants in the IFQ fisheries (see the proposed rule preamble and section 2.1 of the RIR for additional detail). NMFS has determined that this final rule meets the Council's objective to provide the community of Adak with long-term opportunities to access the halibut and sablefish fisheries, is consistent with the goals for the IFQ Program, and is not likely to have significant effects on individual participants in the IFQ fisheries or residents of non-CQE communities. Also see the response to comment 4.

Comment 7: Four commenters supported the proposed rule to allow D share IFQ to be fished on category vessels. The commenters believe that allowing IFQ derived from D share QS to be fished on vessels less than or equal to 60 ft. LOA would address the economic hardship and safety concerns resulting from fishing on small vessels in the Aleutian Islands.

Response: NMFS acknowledges the comment.

#### Changes From the Proposed Rule to the Final Rule

NMFS modified the proposed regulatory text to change the definition of an eligible community resident at § 679.2. As proposed, the definition would have provided that an individual must be an IFQ crew member only if the person was receiving halibut or sablefish

IFQ that is derived from QS held by a CQE on behalf of an eligible community in the GOA. For purposes of clarity, the proposed definition has been rewritten and, as included in this final rule, creates an exception to the IFQ crew member requirement when that person is receiving halibut or sablefish IFQ that is derived from QS held by an Aleutian Islands CQE. There is no change in the substantive effect of the definition.

#### Classification

The NMFS Assistant Administrator determined that Amendment 102 to the BSAI FMP and this final rule are necessary for the conservation and management of the halibut and sablefish IFQ and CQE fisheries and that they are consistent with the Magnuson-Stevens Act, Halibut Act, and other applicable laws.

Regulations governing the U.S. fisheries for Pacific halibut are developed by the International Pacific Halibut Commission (IPHC), the Pacific Fishery Management Council, the North Pacific Fishery Management Council (Council), and the Secretary of Commerce. Section 5 of the Northern Pacific Halibut Act of 1982 (Halibut Act, 16 U.S.C. 773c) allows the regional council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The final action is consistent with the Council's authority to allocate halibut catches among fishery participants in the waters off Alaska.

#### Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a final regulatory flexibility analysis (FRFA), the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity

compliance guides.” The agency shall also explain the actions a small entity is required to take to comply with a rule or group of rules. The preamble to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the proposed and final rules. Copies of this final rule are available from the NMFS Alaska Region website at <http://alaskafisheries.noaa.gov>.

#### Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

#### Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis (FRFA) is required by the Regulatory Flexibility Act (RFA). This FRFA incorporates the Initial Regulatory Flexibility Analysis (IRFA) prepared for the proposed rule and addresses the applicable requirements of section 604 of the RFA. A statement of the need for, and objectives of, this final rule is described in the preamble to this rule and is not repeated here. This information also was provided in the preamble to the proposed rule.

#### Comments on the IRFA

NMFS published a proposed rule to implement Amendment 102 and a regulatory amendment on November 14, 2013 (78 FR 68390), with comments invited through December 16, 2013. NMFS received nine comment letters from the public on Amendment 102 and the proposed rule. None of these comments specifically addressed the IRFA, but comments 2, 4, 5, and 6 expressed concerns about the potential impacts of establishing a CQE in the Aleutian Islands on current participants in the halibut and sablefish IFQ fisheries. NMFS’ responses to

these comments explain that the Council and NMFS considered the potential impacts of Amendment 102 on participants in the halibut and sablefish fisheries and determined that it is unlikely to have negative impacts on non-CQE participants in the halibut and sablefish fisheries. Several provisions of the Aleutian Islands CQE Program, including the QS transfer and use limits implemented by this final rule, limit the amount of total QS that a CQE may obtain and use. NMFS has determined that this final rule balances the objectives of the action with consideration of the impacts on non-CQE participants in the halibut and sablefish fisheries.

No comments on the proposed rule were filed with NMFS by the Chief Counsel for Advocacy of the Small Business Administration.

#### Number and Description of Directly Regulated Small Entities

The determination of the number and description of small entities regulated by these actions is based on small business standards established by the Small Business Administration (SBA). On June 20, 2013, the SBA issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from \$4.0 to 19.0 million, Shellfish Fishing from \$4.0 to 5.0 million, and Other Marine Fishing from \$4.0 to 7.0 million. *Id.*, at 37400 (Table 1). The new size standards were used to prepare the FRFA for this action.

At present, NMFS does not have sufficient ownership and affiliation information to determine precisely the number of entities in the IFQ Program that are “small” based on SBA guidelines, nor the number that would be adversely impacted by either of the present actions. This FRFA therefore assumes that all directly regulated operations are small.

#### Action 1: Aleutian Islands CQE Program

Action 1 applies to communities in the Aleutian Islands that meet the CQE Program eligibility criteria. For the foreseeable future, Adak, Alaska, is the only community in the Aleutian Islands that meets the CQE eligibility criteria. The eligible community of Adak, AK, is considered a small entity (small governmental jurisdiction) under the RFA, since it is a government of a town or village with a population of less than 50,000. The purpose and intent of this action is to have the affected community entity acquire QS and make the resulting IFQ available by lease to eligible harvesters. This action requires those harvesters to make a series of reports and declarations to NMFS in order to be found eligible to participate. Therefore, those commercial fishing operations are directly regulated small entities, although their number is unknown at this time. Further, NMFS anticipates that any economic impacts accruing from the action to these small entities are beneficial because it is expected to improve access to the IFQ fisheries for affected small entities.

#### Action 2: Allow D Share IFQ to be Fished on Category C Vessels

Businesses operating in the commercial halibut fisheries will also be directly regulated by Action 2 of this rule. There are 12 halibut QS holders who are eligible to transfer D share QS in Area 4B. This action directly regulates all of these holders, although NMFS expects the actual number of participants will be smaller. Additionally, the entities affected by Action 2 may be divided into two, mutually exclusive groups to estimate their size relative to the \$19 million threshold. There are operations that harvest both halibut and groundfish (sablefish is considered a groundfish species, while halibut is not) for which gross revenue data exist. There are also operations that harvest halibut but no groundfish that have gross receipts data. These entities may also harvest species such as herring or salmon.



In 2009, the most recent year of complete ex-vessel price data, the total standard ex-vessel value of the total catch taken in the commercial halibut fishery in Area 4B was about \$3 million. Since this action only affects up to 12 Area 4B D share IFQ holders, who hold potentially 3 percent of the total Area 4B IFQ, the affected IFQ holdings can be valued at about \$90,000. Action 2 directly affects participants in the Area 4B halibut fishery who hold D share QS, and indirectly affects an unknown number of owners of larger, category C vessels upon whose vessels those D share QS may be used.

Section 2.0 of the RIR/IRFA for Action 2 (see ADDRESSES) estimates that in 2009 the total gross revenues for fixed-gear catcher vessels by entity, from all sources off Alaska (not just Area 4B), did not exceed \$19 million in gross revenues, which has been the case since 2003. The average gross revenue for the small fixed-gear catcher vessels was about \$510,000. Thus, all of the entities that harvest both halibut and groundfish in Area 4B are under the threshold. Since the IFQ Program limits the amount of annual IFQ that any single vessel may use to harvest halibut and sablefish and the maximum number of QS units an entity may use, NMFS believes that no vessels that harvest halibut exclusively would exceed the \$19 million threshold, either.

Based upon gross receipts data for the halibut fishery, and more general information concerning the probable economic activity of vessels in this IFQ fishery, no entity (or at most a de minimis number) directly regulated by these restrictions could have been used to land fish worth more than \$19 million in combined gross receipts in 2009. Therefore, all halibut vessels have been assumed to be “small entities” for purposes of the FRFA. This simplifying assumption may overestimate the number of small entities, since it does not take account of vessel affiliations, owing to an absence of reliable data on the existence and nature of these relationships.

Based on the low revenues for the average groundfish vessel and the low cap on maximum halibut and sablefish revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of vessels. Therefore, the available data and FRFA (see ADDRESSES) suggest that there are few, if any, large entities among the directly regulated entities subject to the action.

#### Recordkeeping and Reporting

Implementation of Action 1 in this final rule will not change the recordkeeping requirements or overall reporting structure of the vessels in the IFQ fisheries. This action requires additional recordkeeping, reporting, and other compliance requirements for the Aleutian Islands CQE entity. The community of Adak will have to qualify as a non-profit entity to purchase, hold, and lease the QS on behalf of the community in order to participate in the CQE Program. Specifically, to become a CQE, an Application for a Non-Profit Corporation to be Designated as a Community Quota Entity (CQE) is filed with the State of Alaska. A CQE must then submit an application of eligibility for a non-profit organization seeking to be qualified as a CQE for a community in the Aleutian Islands before the NMFS Regional Administrator may certify the CQE as eligible. Once an eligible CQE is formed, the CQE is subject to the same recordkeeping and reporting requirements for QS and IFQ transfers as are individuals who hold QS. The CQE also is required to submit to NMFS an annual report detailing the use of QS and IFQ by the CQE and Aleutian Islands fishery participants.

The cost to the CQE representing Adak in fulfilling these administrative requirements will vary, but is expected to be minimal relative to the potential benefits. Neither the applications to be designated and certified as a CQE nor the annual report is intended to be significantly burdensome on the entity. In sum, the CQE representing Adak would not be

mandated to fulfill these reporting requirements unless it chooses to participate in the CQE program, and participation in the program is on a voluntary basis.

Individuals that lease IFQ from the CQE representing Adak will generally be subject to the same recordkeeping and reporting requirements as are individuals who hold QS. The primary recordkeeping and reporting requirements beyond those required for individual QS holders, as discussed above, are the responsibility of the CQE representing Adak, which would be listed as the QS holder. These requirements are necessary to monitor how QS held by the CQE representing Adak is being used among eligible harvesters and to collect information necessary to evaluate the program.

No new requirements for recordkeeping and reporting were identified for Action 2 to remove the current restrictions on vessel length associated with D share QS. Implementation of this final rule will not change the overall recordkeeping and reporting requirements of the vessels in the IFQ fisheries.

#### Description of Significant Alternatives to the Final Action That Minimize Adverse Impacts on Small Entities

A FRFA must describe the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected. “Significant alternatives” are those that achieve the stated objectives for the action, consistent with prevailing law with potentially lesser adverse economic impacts on small entities, as a whole.

#### Action 1: Aleutian Islands CQE Program

During consideration of this action, the Council evaluated two alternatives, including 1) no action, and 2) establish an Aleutian Islands CQE Program to allow a community in Area 4B to hold commercial Area 4B halibut and Aleutian Islands sablefish QS for lease to and use by community residents. Although the analysis identifies two primary alternatives, Alternative 2 contains seven elements and multiple options within each element that effectively operate as separate alternatives. Thus, the Council was able to specify options within each of the elements under Alternative 2 independent of each other. These elements and options effectively provided the Council with hundreds of different possible combinations, or "alternatives" from which to select a preferred alternative at final action. The Council therefore identified a wide range of elements to be analyzed that would meet the stated objective of this action, while minimizing, to the extent practicable, any adverse impacts on small entities. The no action alternative did not meet the objectives of the action, but would have a smaller adverse impact on small entities when compared with the preferred alternative.

Since participation in the CQE Program is completely voluntary, Action 1 of this final rule is not expected to result in adverse impacts on directly regulated small entities. NMFS expects that there will be some redistribution of halibut and sablefish QS under this action, because it is intended to have distributional effects among QS holders by promoting the transfer of a limited amount of QS from persons to the CQE. However, this redistribution will not have significant costs to the fishery participants.

The maximum amount of QS that could be purchased by an Aleutian Islands CQE is 15 percent of the regulatory Area 4B halibut QS and 15 percent of the Aleutian Islands sablefish QS (Area 4B coincides with the Aleutian Islands). Overall, individuals residing in communities other than Adak, AK, will still realize the majority of the benefit from Aleutian Islands sablefish

QS, but more of the revenues will be retained in the community of Adak than are currently, and less in the larger, more accessible communities, or in communities outside of Alaska, where other Aleutian Islands sablefish and Area 4B halibut QS holders reside. The effect of this action on Adak will depend on the willingness and ability of the CQE to purchase Area 4B halibut QS and Aleutian Islands sablefish QS. Benefits from increased QS holdings could include lower costs to participate in fisheries and help maintain access to and participation in the IFQ fisheries.

All available evidence suggests that by the voluntary nature of the CQE Program and the program provisions themselves, there is no potential for proposed Action 1 to impose significant adverse economic impacts on a substantial number of small entities.

#### Action 2: Allow D Share IFQ to be Fished on Category C Vessels

During consideration of this action, the Council evaluated two alternatives, including 1) no action, and 2) removing the category D vessel-size restriction for Area 4B halibut QS to allow harvest of the resulting IFQ on larger vessels. Retention of the no action alternative would impose adverse economic impacts on directly regulated small entities. Under the status quo, D share QS holders (all of whom are assumed to be small entities) must fish their quota from boats 35 feet or less in LOA. This requirement puts these entities at some physical and economic risk, owing to the remoteness and severity of weather and sea conditions under which they operate.

Alternative 2, the preferred alternative, seeks to mitigate these adverse economic and operational impacts on directly regulated small entities. It does so by removing the category D vessel-size restriction for Area 4B halibut QS; thus allowing harvest of the resulting IFQ from vessels better suited to the extremes of this region. By allowing these entities to harvest IFQ derived from D share QS on larger vessels, the action recognizes the unique needs of, and burdens imposed upon, directly regulated small entities in Area 4B, and makes accommodation

for these limitations. On the basis of the foregoing analysis, the preferred alternative (relative to the status quo) appears to be the least burdensome for directly regulated small entities, among all available alternatives.

Based on the analyses prepared for these actions, as well as consideration of the objectives of the actions, it appears that there are no alternatives to the actions with potentially less adverse economic impact while also accomplishing the stated objectives of the Magnuson-Stevens Act and other applicable statutes.

Taking public comment into consideration, NMFS has identified no additional significant alternatives that accomplish statutory objectives and minimize any significant economic impacts of this final rule on small entities.

#### Collection-of-Information Requirements

This rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) and which have been approved by OMB. The collections are listed below by OMB control number.

OMB Control Number 0648-0272

Public reporting burden is estimated to average per response two hours for the Application for Eligibility to Receive QS/IFQ.

OMB Control Number 0648-0665

Public reporting burden is estimated to average per response two hours for an Application for Transfer of QS to or from a Community Quota Entity (CQE) and two hours for an Application for a CQE to transfer IFQ to or from an eligible community resident or non-resident.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comment regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and by email to [OIRA\\_Submission@omb.eop.gov](mailto:OIRA_Submission@omb.eop.gov), or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 10, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS amends 50 CFR part 679 as follows:

**PART 679-FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA**

1. The authority citation for 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq.; 1801 et seq.; 3631 et seq.; Pub. L. 108-447.

2. In § 679.2, revise paragraph (3) and add paragraph (4) of the definition of “Community quota entity”, revise paragraph (2) introductory text and add paragraph (3) of the definition of

“Eligible community”, and revise paragraph (1)(iii) to the definition of “Eligible community resident” to read as follows:

§ 679.2 Definitions.

\* \* \* \* \*

Community quota entity (CQE) (for purposes of the IFQ Program) means a non-profit organization that:

\* \* \* \* \*

(3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community; and

(4) Must be the Adak Community Entity as defined at § 680.2 if that non-profit organization represents the eligible community of Adak, AK.

\* \* \* \* \*

Eligible community means:

\* \* \* \* \*

(2) For purposes of the IFQ program in the GOA, a community that is listed in Table 21 to this part, and that:

\* \* \* \* \*

(3) For purposes of the IFQ program in the Aleutian Islands subarea, a community that is listed in Table 21 to this part, and that:

(i) Is a municipality or census designated place, as defined in the 2000 United States Census, located on the Aleutian Islands subarea coast of the North Pacific Ocean;

(ii) Is not an entity identified as eligible for the CDQ Program under 16 U.S.C. 1855(i)(1)(D);



(iii) Has a population of not less than 20 and not more than 1,500 persons based on the 2000 United States Census;

(iv) Has had a resident of that community with at least one commercial landing of halibut or sablefish made during the period from 1980 through 2000, as documented by the State of Alaska Commercial Fisheries Entry Commission; and

(v) Is not accessible by road to a community larger than 1,500 persons based on the 2000 United States Census.

Eligible community resident means:

(1) \* \* \*

(iii) Is an IFQ crew member except when that person is receiving halibut or sablefish IFQ that is derived from QS held by a CQE on behalf of an eligible community in the Aleutian Islands.

\* \* \* \* \*

3. In § 679.5, revise paragraphs (t)(5)(v)(B), (C), (E), and (J) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

\* \* \* \* \*

(t) \* \* \*

(5) \* \* \*

(v) \* \* \*

(B) A description of the process used by the CQE to solicit applications from eligible community residents and non-residents to use IFQ that is derived from QS that the CQE is holding on behalf of the eligible community;

(C) The total number of eligible community residents and non-residents who applied to use IFQ derived from QS held by the CQE;

\* \* \* \* \*

(E) A detailed description of the criteria used by the CQE to distribute IFQ among eligible community residents and non-residents who applied to use IFQ held by the CQE;

\* \* \* \* \*

(J) For each community whose eligible community residents and non-residents landed IFQ derived from QS held by the CQE, provide any payments made to the CQE for use of the IFQ.

\* \* \* \* \*

4. In § 679.41, revise paragraphs (d)(6)(i), (g)(6), and (l)(3)(iv) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

\* \* \* \* \*

(d) \* \* \*

(6) \* \* \*

(i) Fewer than 150 days of experience working as an IFQ crew member, unless that person attests in the Application for Eligibility that he or she is an eligible community resident of Adak, AK, who will receive only halibut IFQ in regulatory area 4B or sablefish IFQ in the regulatory area of the Aleutian Islands subarea that is derived from QS held by a CQE on behalf of Adak, AK.

\* \* \* \* \*

(g) \* \* \*

(6) IFQ derived from QS held by a CQE on behalf of an eligible community:

(i) In the GOA may be used only by an eligible community resident of that community.

(ii) In the Aleutian Islands subarea may be used by any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to March 17, 2019 and only by an eligible community resident of Adak, AK, after March 17, 2019.

\* \* \* \* \*

(1) \* \* \*

(3) \* \* \*

(iv) A statement describing the procedures that will be used to determine the distribution of IFQ to eligible community residents and non-residents of the community represented by that CQE, including:

(A) Procedures used to solicit requests from eligible community residents and non-residents to lease IFQ; and

(B) Criteria used to determine the distribution of IFQ leases among qualified community residents and non-residents and the relative weighting of those criteria.

\* \* \* \* \*

5. In § 679.42,

a. Revise paragraphs (a)(2)(iii), (a)(2)(iv), (e)(1), (e)(3), (e)(4), (e)(6), (e)(8), (f)(1) introductory text, (f)(3), (f)(5), and (f)(7), and

b. Add paragraphs (e)(9) and (f)(2)(iii) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) \* \* \*

(2) \* \* \*

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length, with the exception of IFQ derived from QS in IFQ regulatory areas 3A and 4B that are assigned to vessel category D.

(iv) In IFQ regulatory areas 3B, 4B, and 4C, category D QS and associated IFQ authorizes an IFQ permit holder to harvest IFQ halibut on a vessel less than or equal to 60 ft (18.3 m) LOA.

\* \* \* \* \*

(e) \* \* \*

(1) No person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than 3,229,721 units of sablefish QS, except if the amount of a person's initial allocation of sablefish QS is greater than 3,229,721 units, in which case that person may not use more than the amount of the initial allocation.

\* \* \* \* \*

(3) No CQE may hold sablefish QS in the IFQ regulatory area of the Bering Sea subarea.

(4) No CQE may hold more than:

(i) 3,229,721 units of sablefish QS on behalf of any single eligible community in the GOA; or

(ii) 4,789,874 units of sablefish QS on behalf of any single eligible community in the Aleutian Islands subarea.

\* \* \* \* \*

(6) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(ii) 15 percent of the total QS specified in § 679.41(e)(2)(v) of this part for sablefish.

\* \* \* \* \*

(8) A CQE receiving category B or C sablefish QS through transfer and representing an eligible community:

(i) In the GOA may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held; and

(ii) In the Aleutian Islands subarea may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to March 17, 2019 and only to an eligible community resident of Adak, AK, after March 17, 2019.

(9) A CQE representing an eligible community in the Aleutian Islands subarea may receive by transfer or use sablefish QS only in the Aleutian Islands subarea.

\* \* \* \* \*

(f) \* \* \*

(1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person other than a CQE representing the community of Adak, AK, individually or collectively, may use more than:

\* \* \* \* \*

(2) \* \* \*

(iii) IFQ regulatory area 4B. 1,392,716 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4C, 4D, and 4E.

\* \* \* \* \*

(5) In the aggregate, all CQEs are limited to holding a maximum of:

(i) 21 percent of the total QS in each regulatory area specified in §679.41(e)(3)(i) through (e)(3)(iii) of this part for halibut.

(ii) 15 percent of the total QS specified in § 679.41(e)(3)(v) of this part for halibut.

\* \* \* \* \*

(7) A CQE receiving category B, C, or D halibut QS through transfer:

(i) In an IFQ regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this part may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(ii) In IFQ regulatory area 4B may lease the IFQ resulting from that QS to any person who has received an approved Application for Eligibility as described in paragraph (d) of this section prior to March 17, 2019 and only to an eligible community resident of Adak, AK, after March 17, 2019.

\* \* \* \* \*

6. Revise Table 21 to part 679 to read as follows:

Table 21 to Part 679 – Eligible communities, Halibut IFQ Regulatory Area Location, Community Governing Body that Recommends the CQE, and the Fishing Programs and Associated Areas where a CQE Representing an Eligible Community may be Permitted to Participate.

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Adak	4B	City of Adak				X		X				
Akhiok	3A	City of <a href="#">Akhiok</a> .		X	X		X			7	2	
Angoon	2C	City of <a href="#">Angoon</a> .	X	X			X		4			
Chenega Bay	3A	Chenega IRA Village.		X	X		X			7	2	
Chignik	3B	City of <a href="#">Chignik</a> .		X	X		X				3	
Chignik Lagoon	3B	Chignik Lagoon Village Council.		X	X		X				4	
Chignik Lake	3B	Chignik Lake Traditional Council.		X	X		X				2	
Coffman Cove	2C	City of <a href="#">Coffman Cove</a> .	X	X			X		4			
Cold Bay	3B	City of Cold Bay.		X	X		X					2
Craig	2C	City of <a href="#">Craig</a> .	X	X			X					
Edna Bay	2C	Edna Bay Community Association.	X	X			X		4			
Elfin Cove	2C	Community of <a href="#">Elfin Cove</a> .	X	X			X					
Game Creek	2C	N/A.	X	X			X		4			
Gustavus	2C	Gustavus Community Association.	X	X			X					
Halibut Cove	3A	N/A.		X	X		X			7	2	
Hollis	2C	Hollis Community Council.	X	X			X		4			

Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Hoonah	2C	City of Hoonah.	X	X			X		4			
Hydaburg	2C	City of Hydaburg.	X	X			X		4			
Ivanof Bay	3B	Ivanof Bay Village Council.		X	X		X					2
Kake	2C	City of Kake.	X	X			X		4			
Karluk	3A	Native Village of Karluk.		X	X		X			7	2	
Kasaan	2C	City of Kasaan.	X	X			X		4			
King Cove	3B	City of King Cove.		X	X		X					9
Klawock	2C	City of Klawock.	X	X			X		4			
Larsen Bay	3A	City of Larsen Bay.		X	X		X			7	2	
Metlakatla	2C	Metlakatla Indian Village.	X	X			X		4			
Meyers Chuck	2C	N/A.	X	X			X		4			
Nanwalek	3A	Nanwalek IRA Council.		X	X		X			7	2	
Naukati Bay	2C	Naukati Bay, Inc.	X	X			X		4			
Old Harbor	3A	City of Old Harbor.		X	X		X			7	5	
Ouzinkie	3A	City of Ouzinkie.		X	X		X			7	9	
Pelican	2C	City of Pelican.	X	X			X		4			
Perryville	3B	Native Village of Perryville.		X	X		X					2
Point Baker	2C	Point Baker Community.	X	X			X		4			
Port Alexander	2C	City of Port Alexander.	X	X			X		4			
Port Graham	3A	Port Graham Village Council.		X	X		X			7	2	
Port Lions	3A	City of Port Lions.		X	X		X			7	6	



Eligible GOA or AI community	Halibut IFQ regulatory area in which the community is located	Community governing body that recommends the CQE	May hold halibut QS in halibut IFQ regulatory				May hold sablefish QS in sablefish IFQ regulatory areas		Maximum number of CHPs that may be held in halibut IFQ regulatory		Maximum number of Pacific cod endorsed non-trawl groundfish licenses that may be assigned in the GOA groundfish regulatory area	
			Area 2C	Area 3A	Area 3B	Area 4B	CG, SE, WG, and WY (All GOA)	AI	Area 2C	Area 3A	Central GOA	Western GOA
Port Protection	2C	Port Protection Community Association.	X	X			X		4			
Sand Point	3B	City of Sand Point.		X	X		X					14
Seldovia	3A	City of Seldovia.		X	X		X			7	8	
Tatitlek	3A	Native Village of Tatitlek.		X	X		X			7	2	
Tenakee Springs	2C	City of Tenakee Springs.	X	X			X		4			
Thorne Bay	2C	City of Thorne Bay.	X	X			X		4			
Tyonek	3A	Native Village of Tyonek.		X	X		X			7	2	
Whale Pass	2C	Whale Pass Community Association.	X	X			X		4			
Yakutat	3A	City of Yakutat.		X	X		X			7	3	

N/A means there is not a governing body recognized in the community at this time.  
CHPs are Charter halibut permits.